

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 GREGORY LEE HAYNES,)

10 Petitioner,)

11 v.)

12 UNITED STATES OF AMERICA,)

13 Respondent.)
14

CASE NO. C05-86Z
(CR97-282Z)

ORDER

15
16 This Case comes before the Court on the Petitioner's Motion to Modify Sentence,
17 docket no. 1.

18 **BACKGROUND**

19 In 1998, defendant Haynes and his co-defendant James Denton entered a
20 conditional guilty plea in this Court to one count of conspiracy to manufacture marijuana
21 and one count of conspiracy to commit money laundering. Haynes was sentenced to six
22 years' incarceration, to be followed by five years of supervised release. Haynes appealed
23 the denial of his motions to dismiss the indictment and to suppress fruits of a search. The
24 government cross-appealed. The Ninth Circuit Court of Appeals denied Haynes' appeal,
25 granted the government's cross-appeal, and remanded the case to the District Court for
26 re-sentencing. United States v. Haynes, 216 F.3d 789 (9th Cir. 2000).

1 Defendant Haynes, his co-defendant, and the government entered into a new plea
2 agreement. United States v. Haynes, CR 97-0282Z, docket no. 536 (Plea Agreement). In
3 the new plea agreement, Haynes agreed that imposition of a term of 80 months was the
4 appropriate disposition of his case. Id. at ¶ 4. Mr. Haynes also stated in the plea
5 agreement that he understood that if the Court accepted the agreement, the Court would
6 impose a sentence of 80 months. Id. The Court imposed the agreed sentence of 80
7 months on April 30, 2001. United States v. Haynes, CR 97-0282Z, docket no. 550
8 (Judgment).

9 The Petitioner filed a motion to modify his sentence under 28 U.S.C. § 2255 on
10 January 14, 2005. The government has responded to this motion, docket no. 8. The
11 Petitioner has not replied. The motion is now ripe for the Court's review.

12 **DISCUSSION**

13 The Petitioner moves the Court to modify his sentence under 28 U.S.C. § 2255
14 based on ineffective assistance of counsel and because his conviction by a plea was
15 unlawfully induced. Petitioner argues in a supplement to his motion that his sentence was
16 illegal under United States v. Booker, 125 S.Ct. 738 (2005)

17 **1. Timeliness of Petitioner's Motion.**

18 The Petitioner's motion is untimely. Motions made under 28 U.S.C. § 2255 must
19 be made within one year from the latest of four specified events: (1) "the date on which
20 the judgment of conviction becomes final;" (2) "the date on which the impediment to
21 making a motion created by governmental action in violation of the Constitution or laws
22 of the United States is removed, if the movant was prevented from making a motion by
23 such governmental action;" (3) "the date on which the right asserted was initially
24 recognized by the Supreme Court, if that right has been newly recognized by the Supreme
25 Court and made retroactively applicable to cases on collateral review;" or (4) "the date on
26 which the facts supporting the claim or claims presented could have been discovered

1 through the exercise of due diligence.” 28 U.S.C. § 2255.

2 The Petitioner was re-sentenced on April 30, 2001. His appeal period expired ten
3 days later. Thus, his conviction was final on May 9, 2001. See United States v.
4 Schwartz, 274 F.3d 1220, 1223 (9th Cir. 2001). The Petitioner’s Section 2255 motion
5 was filed nearly three years after the deadline. The Petitioner does not argue that his
6 motion is timely under 28 U.S.C. § 2255.

7 **2. Effect of Booker on Petitioner’s Motion**

8 Although the Petitioner does not explicitly argue that his petition is timely, the
9 Petitioner has invoked United States v. Booker, 125 S.Ct. 738 (2005). Therefore, the
10 Petitioner may be implicitly arguing that the Supreme Court’s decision in Booker has
11 created a new right which is retroactively applicable to cases on collateral review, thus
12 making his motion timely under Section 2255.

13 Booker does not apply to the Petitioner’s case. In Booker, the Supreme Court held
14 that the Sixth Amendment’s right to a jury trial does not allow a district court employing
15 the Federal Sentencing Guidelines to increase a defendant’s sentence by considering facts
16 which the defendant did not admit to or were not found by a jury beyond a reasonable
17 doubt. 125 S.Ct. at 749-51. However, in cases such as the Petitioner’s, which involve a
18 guilty plea, the Judge may consider facts admitted by the Defendant in the plea when
19 imposing a sentence under the Federal Sentencing Guidelines. Id. at 756.

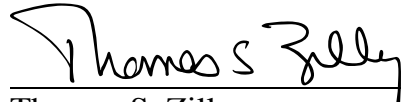
20 In this case, the Court imposed the 80 month sentence agreed to by both the
21 Petitioner and the Government. The Court did not enhance the sentence or consider facts
22 that the Defendant did not admit. Therefore, Booker is inapplicable to this case and does
23 not affect the timeliness of the Petitioner’s motion.

24 **CONCLUSION**

25 The Court DENIES the Petitioner’s Motion to Modify Sentence, docket no. 1, as
26 untimely.

1 IT IS SO ORDERED.

2 DATED this 11th day of August, 2005.

3
4 
5 Thomas S. Zilly
6 United States District Judge
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26